

January 28, 2008

Ms. Pamela Holmes  
150 Karlyn Drive  
New Castle, DE 19720

**RE: Freedom of Information Act Complaint Against  
Colonial School District Board of Education**

Dear Ms. Holmes:

On November 8, 2007, the Delaware Department of Justice ("DDOJ") received your complaint alleging that the Colonial School District Board of Education ("the School Board") violated the open meeting requirements of the Freedom of Information Act, 29 Del. C. Ch. 100 ("FOIA"), by not allowing you to speak at a public meeting on October 9, 2007 about your nephew's expulsion by the School Board.

By letter dated November 29, 2007, the DDOJ asked the School Board to respond to your complaint in writing by December 10, 2007. We received the School Board's response by facsimile on December 10, 2007. We asked the School Board for additional information, which we received by December 19, 2007.

According to the School Board, "Ms. Holmes attempted to speak [at the School Board's October 9, 2007 public meeting] concerning the expulsion of her [nephew]. She was free to speak at the meeting regarding other subjects, and was invited to do so twice. Ms. Holmes was not, however, permitted to address the pending expulsion of her [nephew]. The pending expulsion was not a matter of public concern which would have required the expulsion to be placed on the agenda".

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On October 2, 2007, the School Board posted notice of a meeting to be held on October 9, 2007. The notice listed an executive session (closed to the public) starting at 5:30 p.m. to discuss “Student Discipline, Specific Personnel Matters, and Legal issues” followed by a special workshop session (open to the public) and a regular session (open to the public) starting at 7:00 p.m.

The agenda for the October 9, 2007 public session listed for discussion “X. Public Comment. This is an opportunity for members of the public to talk to the Board of Education about items on the agenda or other matters of general interest to the district. Those who wish to make comments are asked to complete a *Public Comment Form*. The Board welcomes comments but will not respond at the meeting. Staff will be directed to gather information and follow-up with the presenter as necessary. Comments will be recorded in the process”.

The minutes of the public session of the October 9, 2007 meeting reflect that the “Board considered the recommendations of the hearing officers regarding the expulsion of Students #08-101 and #08-102, who were discussed in Executive Session.” The Board then voted on the disciplinary actions. The minutes reflect that later in the public session the Board heard public comments from three citizens.

The Board provided the DDOJ with a transcript of the public comment period from the October 9, 2007 meeting. The transcript shows that the Board did not allow you to speak about your nephew’s expulsion.

Dr. Meney then called on Ms. Holmes, who responded. Dr. Meney asked if he could ask her a question, "Is this related to an individual child?" Mrs. Holmes responded in the affirmative. "Did you read the back of this [the public comment form]? She responded that she didn't. "We will not enter into discussions about specific students because of privacy rights. The Board will not enter into a discussion related to a particular child .... The Board will not accept anything related to a discipline case...Mrs. Holmes "So I can't talk to you about anything that" Dr. Meney: "You cannot talk to us about a discipline case. The appeal process that you might use will be explained to you, but we cannot do that".

### **RELEVANT STATUTES**

FOIA's "Declaration of Policy", 29 Del. C. §10001, provides that "citizens shall have the opportunity to **observe** the performance of public officials and to **monitor** the decisions that are made...." (emphasis added). To that end FOIA requires that "[e]very meeting of all public bodies shall be open to the public except those closed" for executive session as authorized by statute. 29 Del. C. §10004(a). Executive session is authorized for the "hearing of student disciplinary cases unless the student requests a public session". 29 Del. C. §10004(b)(7).

### **LEGAL ANALYSIS**

FOIA does not require a public body to allow members of the public to speak during a public meeting. "There is nothing in the text of the declaration of policy or in the open meeting provision requiring public comment or guaranteeing the public the right to participate[.]" *Reeder v. Delaware Department of Insurance*, 2006 WL 510067, \*12 (Del.Ch. 2006), *aff'd*, 931 A.2d 1007 (Del. 2006).

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**CONCLUSION**

For the foregoing reasons, the DDOJ determines that the School Board did not violate the open meeting requirements of FOIA by denying you the opportunity to speak about your nephew's expulsion during a public comment period at the October 9, 2007 meeting.

Very truly yours,

Judy Oken Hodas  
Deputy Attorney General

APPROVED

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Lawrence W. Lewis  
State Solicitor

cc: The Honorable Joseph R. Biden, III  
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